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IN THE SUPREME COURT

OF THE UNITED STATES

RICHARD M. BAKER AND SHIZUKO BAKER,

Appellants,

v.

COMMISSIONER OF INTERNAL REVENUE,

Appellee

ON APPEAL FROM THE UNITED STATES COURT

OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. DID THE TAX COURT ERR IN HOLDING THAT APPELLANT, RICHARD M. BAKER IS SUBJECT TO THE LAWS OF THE UNITED STATES?

II. DID THE TAX COURT ERR IN HOLDING THAT APPELLANT, RICHARD M. BAKER RECEIVED ANY "DOLLAR" AS INCOME FOR TAX PURPOSES IN THE YEARS IN QUESTION?

III. DID THE TAX COURT ERR IN HOLDING THAT APPELLANT'S FAILURE TO FILE TAX RETURNS FOR THE TAXABLE YEARS IN QUESTION WAS NOT A PROPER EXERCISE OF THEIR RIGHTS UNDER THE FOURTH AND FIFTH AMENDMENTS?

IV. DID THE TAX COURT ERR IN HOLDING THAT THE SIXTEENTH AMENDMENT IS NOT LIMITED IN ITS APPLICATION TO INCOME EARNED BY BUSINESSES AND TRADES LICENSED BY THE GOVERNMENT?

V. DID THE TAX COURT ERR IN HOLDING THAT THE SIXTEENTH AMENDMENT WAS PROPERLY RATIFIED?

VI. DID THE TAX COURT ERR IN HOLDING THAT THE INTERNAL REVENUE SERVICE HAD AUTHORITY TO COLLECT TAXES IN CALIFORNIA DURING THE YEARS IN QUESTION?

VII. DID THE TAX COURT ERR IN HOLDING THAT THE ASSESSMENT OF TAXES AGAINST APPELLANT SHIZUKO BAKER DOES NOT IMPAIR THE CONTRACT OF MARRIAGE BETWEEN APPELLANTS?

VIII. DID THE TAX COURT ERR IN DENYING APPELLANT'S MOTION FOR A JURY TRIAL?

PARTIES TO THE PROCEEDING

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OPINION BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit, (App. infra, pp. A1) is unreported. The opinion of the Tax Courts (App, B infra, pp. B1 to B12) is reported at 37 T.C.M. 307 (1978).

JURISDICTION

The opinion of the United State Court of Appeals for the Ninth Circuit was entered on December 20, 1980. The Appellants petition for rehearing was denied on January 29, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

STATEMENT

Subsequent to 1971, Appellants, RICHARD M. BAKER and SHIZUKO BAKER were assessed a deficiency and consequent penalties for failure to file Federal Income Tax Returns for the years 1970 and 1971.

The Appellants filed a timely petition in Tax Court challenging the legality and constitutionality of the Sixteenth Amendment and subsequent legislation passed pursuant thereto, as well as the legality and constitutionality of any tax law as applied to Appellants.

On appeal to the United States Court of Appeals for the Ninth Circuit, the Appellants raised the following issues:

I. It was error for the Tax Court below to find that Appellant, RICHARD M. BAKER is subject to the laws of the United States.

II. It was error for the Tax Court below to find that Appellant, RICHARD M. BAKER received any "dollars" as

income for tax purposes in the years in question.

III. It was error for the Tax Court below to find that Appellant's failure to file tax returns for the taxable years in question was not a proper exercise of their rights under the Fourth and Fifth Amendments.

IV. It was error for the Tax Court below to find that the Sixteenth Amendment is not limited in its application to income earned by businesses and trades licensed by the government.

V. It was error for the Tax Court below to find that the Sixteenth Amendment was properly ratified.

VI. It was error for the Tax Court below to find that the Internal Revenue Service had authority to collect taxes in California during the years in question.

VII. It was error for the Tax Court below to find that the assessment of taxes against Appellant SHIZUKO BAKER does

not impair the contract of marriage between Appellants.

VIII. It was error for the Tax Court below to deny Appellant's motion for a jury trial.

In its opinion the United States Tax Court held that the Appellant's contentions were "frivolous" and "without merit". And its Memorandum, the United States Court of Appeals for the Ninth Circuit said:

> " [The Petitioners] put forth what the Tax Court characterized as the 'standard litany' of constitutional challenges to the income tax system, choosing not to litigate the merits of their assessed liability. Rather than lend creedance to arguments clearly foreclosed in prior cases [cases cited] by engaging in a point by point rebuttal, we conclude that Appellants legal arguments are simply without merit, and their noval political theory without relevances to the issue before us."

Events of the day are changing rapidly, and the issues raised by the Appellants are becoming increasingly relevant to issues concerning the right and/or power of our government to tax under existing laws. For instance, the public has recently

become aware that the substitution of federal reserve notes in place of dollars has become a major cause of our rampant inflationary cycle. One of the Appellant's issues herein, addresses this problem, to which: Did the Appellants earn taxable "dollars"? The question is no longer frivolous.

History has shown that in the past the United States Supreme Court has been pursuaded by the political atmosphere on decisions relating to paper money. (See, e.g., Hepburn vs. Griswold, 8 Wall. 603 (1870) and related Legal Tender Cases.)

JURISDICTION BELOW

A petition was filed in the Tax Court on April 21, 1977 pursuant to 26 U.S.C. 7442.

Trial in Tax Court was held on February 9 and 15, 1977 in Los Angeles, California before the Honorable Judge Tannewald. The Tax Court filed a Memorandum Finding of Facts and Opinion on February 14, 1978, and decision

was entered on November 17, 1978.

On January 19, 1979, the Appellants filed their notice of appeal to United States Court of Appeal for the Ninth Circuit, pursuant to 28 U.S.C. Section 1254. The Ninth Circuit's Memorandum of Decision was filed on December 29, 1980 and the Appellants' Petition for Rehearing was denied on January 29, 1981.

REASONS FOR GRANTING THE WRIT

I

IT WAS ERROR TO HOLD THAT APPELLANT, RICHARD M. BAKER IS SUBJECT TO THE LAWS OF THE UNITED STATES.

RICHARD M. BAKER has never confirmed, acknowledged, adopted, ratified or acquiesced to the United States Constitution or to any authority of the United States to govern him or to, in any manner, subject him to its laws and in particular to income tax laws.

RICHARD M. BAKER was born within the territorial boundary of the United States, but that, in itself, does not make him a subject of the United States Government or subject to its laws. He has a natural right to remain where he was born.

Laws of the United States Government have been passed pursuant to the United States Constitution, the Preamble of which reads,

> "We the People of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare and secure the Blessing of Liberty to ourselves and our Posterity, to ordain and establish this CONSTITUTION for the United States of America."

The first seven words identify the parties to the contract. By all means of logic, this includes only those who, by exercise of their volition, consent to being so governed and excludes those who, by exercise of their volition, abstain.

Even if it could be shown that Appellant, has at sometime, and in some way ratified the Constitution or acquiesced to be governed by the United States, he has not absolved allegiance to its government and dissolved political connections. People retain the right to dissolve political connections. Declaration of Independence.

In filing the Petition below, Appellant has not consented to authority of the United States Government. He has proceeded in the forum where he can raise timely objections to the United States Government's alleged authority to assess taxes on him.

In particular, Appellant could not be subject to or required to pay individual income taxes. Section 1313(b) of the Internal Revenue Code defines the term "Taxpayer" as meaning "Any person subject to a tax under the applicable revenue laws." Section 770(a)(14) defines "Taxpayer" as meaning "Any person subject to any Internal Revenue Tax." Nowhere in the Internal Revenue Code is the phrase "subject

to" defined. Assuming that the phrase, "subject to", in the Internal Revenue Code is referring only to those people governed by the authority of the United States Constitution, the United States Government has no authority to tax RICHARD M. BAKER.

The Court below has recognized that Appellant RICHARD M. BAKER may well have lost his United States Citizenship before the taxable years in question pursuant to 8 U.S.C Section 1481. But the Court mistakenly proceeds to label him a resident within the United States, subject to its tax laws. RICHARD M. BAKER has renounced his ties to any laws. To hold otherwise is to acknowledge that he is a slave of the State.

II

IT WAS ERROR FOR THE TAX COURT BELOW TO FIND THAT APPELLANT, RICHARD M. BAKER RECEIVED ANY "DOLLARS" AS INCOME IN THE YEARS IN QUESTION.

The dollar "$" sign on the 1040 tax return only required Appellant to report "Dollars" or "units" as they are defined by U.S. Statute.

The Constitution only permits the use of Dollars redeemable in gold or silver, and nonredeemable Federal Reserve notes are not dollars for tax purposes.

1. ARTICLE 1, SECTION 10 OF THE CONSTITUTION IS BINDING UPON THE FEDERAL GOVERNMENT AS WELL AS UPON THE STATES.

The United States Constitution (Article 1, Section 10, Clause 1), provides that: "No state shall . . . make any Thing but gold and silver Coin a Tender in Payment of debts; . . ."

The first Coinage Act of April 2, 1792, specifically defines "Dollar" or "Units" as redeemable in gold or silver. This Statute, which provides for the coining of gold and silver coin, has been been repealed.

The Constitution prohibition of "States" to make anything but gold and silver as legal tender, also applies to Congress and to the Federal Government. The Supreme Court has held that the Due Process Clause of the Fifth Amendment includes

all of the safeguards of equal protection. Bolling vs. Sharpe, 347 U.S. 497 (1954). It would be unthinkable that the Constitution imposed a lesser duty on the Federal Government than on the States, Id.

Therefore, the First Coinage Act and the Fifth Amendment make Article 1 Section 10 binding upon the Federal Government as well as upon States, and 31 U.S.C. Section 392 cannot remain good law where it states in relevant part:

> All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations), regardless of when coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties and dues.

And further, the United States Congress cannot sanction as a legal tender irredeemable Federal Reserve notes issued by a private corporation, such as the Federal Reserve System. The Federal Reserve System has been granted a monopoly on the United States monetary system and is shrouded in an apparent cloak of federal authority by virtue of its name, the Federal Reserve System. This is tantamount to the granting of

a title of nobility or a letter of marque, legislative acts verboten under the Constitution. Article 1, Section 9, Clause 8, and Section 10, Clause 1, United States Constitution.

2. THE MINUTES OF THE DEBATE IN THE CONSTITUTIONAL CONVENTION SHOW CONCLUSIVELY THAT THE RESTRICTIONS IN ARTICLE 1 SECTION 10 CLAUSE 1 OF THE CONSTITUTION ARE ABSOLUTE.

During the Revolutionary War large amounts of irredeemable paper currency were issued both by the States of the Confederation and by the Continental Congress. By 1780 these issues of fiat money, both by the States and the Continental Congress, had depreciated to almost complete worthlessness, in spite of attempts at price and wage controls and other acts of coercion by the various states. Story, Commentaries on the Constitution of the United States, 3 Story 224, Sec. 1354 (1st ed. 1833).

To prevent a recurrence of the damage done to creditors compelled by government to accept depreciating fiat paper in payments of debts, the Constitution place restrictions upon the State and Federal governments.

The States were absolutely prohibited from passing any law impairing the Obligations of Contracts, from emitting Bills of Credit, and from making any Thing but gold and silver Coin a Tender in Payment of Debts.

The Federal government also was denied the authority to allow or compel the States to do any of these probibited things.

On Monday, August 26, 1787, the Committee of Detail submitted its proposed draft of the Constitution to the assembled delegates of the Constitutional Convention. This draft contained two Articles of Prohibitions against the States, Article XII composed of absolute prohibitions which the states could disregard with the consent of Congress:

The ARTICLE XII absolute prohibitions read:

> No state shall coin money; nor grant letter of Marque and reprisal; nor enter into any Treaty, alliance or confederation; nor grant any title of Nobility.

The Article XIII conditional prohibitions read:

> No State, without the consent of the Legislature of the United States, shall

emit bills of credit, or make any thing but specie a tender in payment of debts . . .

See Documents Illustrative of the Formation of the Union of the American States, 69th Congress, 1st Session, House Document No. 398, page 480 (1927).

Thus, in this original draft, a State was to be allowed to make a thing other than specie in tender in payment of debts if Congress consented.

On the following date, Tuesday, August 27, 1787, the Constitutional Convention voted unanimously to move the prohibition in question from the 13th Article, where the restrictions are conditional, to the 12th Article, where the restrictions are absolute, showing their intention that the Federal government be absolutely prohibited from allowing or compelling a State to "Make any thing but gold and silver coin a tender in payment of debts."

Thus, any act of Congress circumventing these absolute prohibitions is beyond the power delegated to the federal government.

In the final draft of the Constitution Articles XII and XIII referred to above were

combined into what is now Article I Section 10, with Article XII becoming Clause 1 and Article XII becoming Clauses 2 and 3.

The Supreme Court has stated in Ex Parte Bain, 121 U.S. 1, 12 (1887), that in interpreting the Constitution "we are to place ourselves as nearly as possible in the condition of the men who framed that instrument." An interpretation of the Constitution must "be held to express the intention of its framers." Woodson vs. Murdock, 89 U.S. 351, 369 (1874).

3. THE SUPREME COURT HAS CONSISTENTLY UPHELD THE POSITION THAT CONGRESS CANNOT AUTHORIZE A STATE TO DO THE THINGS PROHIBITED IN THE FIRST CLAUSE OF ARTICLE 1 SECTION 10.

The intent of the Constitution, that the things prohibited in the first clause of Article I Section 10 are absolutely prohibited, and that Congress may not make valid the action of a State in doing any of these probhitied things, has been consistently upheld. Rhode Island vs. Massachusetts, 37 U.S. 657, 724 (1838); Holmes vs. Jennison, 39, U.S. 540, 570 (1840); Edwards vs. Kearzey, 96 U.S. 595 604 (1878).

The prohibitions in the first clause are absolute and beyond the power of Congress or the Federal or State Courts to change. These prohibitions can only be removed by an amendment to the Constitution.

The Constitution has delegated to Congress two distinct powers:

(1) The power to "fix" the Standard of Weights and Measures, including the Standard of Value.

(2) The power to "regulate" the value of coined Money and the value of foreign Coin.

Congress has "fixed" the Standard of Value by declaring the number grans of gold in the dollar. The power of "regulation" is the power to determine the weight, alloy, and denomination of the various coins and the relation of foreign coin to the fixed monetary unit of the United States.

The Act of March 4, 1911, Section 3548, 36 Stat. 1354, provides that:

> . . . the standard troy pound of the Bureau of Standards of the United States shall be the standard troy pound of the Mint of the United States, conformably

to which the coinage thereof shall be regulated. (Emphasis added.)

Alexander Hamilton, first Secretary of the Treasury, in his "report on the Subject of the Mint" (1790), Annals of the First Congress (Vol. 2, p. 2126), states:

> There is scarcely any point, in the economy of national affairs, of greater moment than the uniform preservation of the intrinsic value of the money unit. On this the security and steady value of property essentially depend.

Their determination on this point is illustrated by the Coinage Act of 1792, an Act establishing a Mint, and regulating the Coins of the United States, Sec. 19, 1 Stat. 246,250:

> . . . every such officer or person who shall commit any or either of the said offenses (debasement of the coinage or embezzlement), shall be deemed guilty of a felony, and shall suffer death.

A coin consists of a quantity of bullion and the stamp of the government certifying its weight and alloy. The value of a coin is not the value of the government's stamp but the value of the bullion it actually contains compared to the Standard of Value fixed by Congress, a coin of

sub-standard weight being worth less than a coin of standard weight. See Coinage Act of 1792, Sec. 16, 1 Stat. 250; Coinage Act of 1834, Sec. 1, 4 Stat. 700; Coinage Act of 1873; Sec. 14. 17 Stat. 426.

As the Supreme Court stated in Myers vs. United States, 272 U.S. 52, 175 (1925):

> This Court has repeatedly laid down the principle that a contemporaneous legislative exposition of the Constitution when the founders of our Government and framers of our Constitution were actively participating in public affairs, acquiesced in for a long term of years, fixes the construction to be given its provisions.

A court of the United States cannot take a specific grant of power to regulate the value of coined money, extend this by implication to a power to regulate "currency", and then use this implied power to destroy the specific prohibitions of Article 1 Section 10.

From the adoption of the Constitution to the time of the Civil War, only gold and silver coin was recognized as a tender in payment of debts. The Courts have rendered various applicable decisions.

Chief Justice Marshall, considering the absolute prohibition of Article I Section 10 Clause 1 against a State passing any "Law impairing the Obligation of Contracts", stated in Sturges vs. Crowninshield, 17 U.S. 122, 203 (1819) that:

> Nothing but gold and silver coin can be made a tender in payments of debts.

Gwin vs. Breedlove, 43 U.S. 29, 38 (1844) said a Marshall could pay into court only gold and silver coin, not the depreciated bank notes that he had taken in. There the Marshall was instructed to collect specie on the execution; he failed to do so, and took bank-notes from the debtor in lieu of specie. The Court stated he could only pay into court gold or silver, if required by the execution creditor to do so; and therefore he ran the risk of converting the notes into specie when he took them; having incurred the risk, the Marshall must bear the loss of depreciation.

During the Civil War, Congress issued a series of Treasury Notes and declared them to be a legal tender for all debts, public and private,

except for duties on imports and interest on the public debt: 12 Stat. 345; 12 Stat. 532; 12 Stat. 709.

Almost immediately a case went to the seven man Supreme Court. In Hepburn vs. Giswold, 8 Wall. 607, the Court held that the "Legal Tender Acts" were unconstitutional. However, on the day of the decision, President Grant appointed two new justices to the Supreme Court under an act of Congress increasing the Court to nine. The Legal Tender questions came back to the Court, which then, in Knox vs. Lee, 12 Wall. 457, held that the "Legal Tender Acts" were constitutional.

It is important to note that throughout the opinion the concept of ultimate return to specia and ultimate redeemability of the legal tender was assumed. For example:

> "No one supposes that these government certificates are never to be paid-- that the day of specie payments is never to return. And it matters not what form they are issued. The principle is still the same. Instead of certificates, they may be Treasury Notes, or paper of any other form. And their payment may not be made directly in coin, but they may be

> first convertible into government bonds, or other government securities. Through whatever changes they pass, their ultimate destiny is to be paid." (12 Wall., 561 to 562, their emphasis; see also 552, 553, 560.)

In Bank vs. Supervisors, 74 U.S. 26, 30, 31 (1869) these Treasury notes were deemed securities redeemable in gold and silver coin. The opinion read as follows:

> But, on the otherhand, it is equally clear that these notes are obligations of the United States. Their name imports obligation. Every one of them expresses upon its face an engagement of the nation to pay to the bearer a certain sum. The dollar note is an engagement to pay dollar and the dollar intended is the coined dollar of the United States; a certain quantity in weight and fineness of gold or silver authenticated as such by the stamp of the government. No other dollars had before been recognized by the legislation of the national government as lawful money . . .

However, in Bronson vs. Rodes, 74 U.S. 229, 254 (1869), legal tender Treasure Notes were not deemed sufficient tender for debts specifically payable in gold and silver Coin, even assuming the legal tender acts of Congress to be constitutional. See also Trebilcock vs. Wilson, 70 U.S. 687 (1872), Butler vs. Horowitz, 74 U.S. 258, 260, (1869).

Title 31, Section 392, states that all coins of the United States, regardless of when coined, are legal tender. This obviously includes all the gold and silver coins of the United States from those coined under the authority of the Coinage Act of 1792 down to the present day. But, Title 31, Section 392, cannot put Federal Reserve notes or any other irredeemable paper currency and coins, not conforming in intrinsic value to the stamped valuation, on an equal basis with other coin and currency of the United States. Such Federal Reserve notes and irredeemable currency and coins not so conforming cannot be tender in payment of an obligation of the United States.

During the years 1970 and 1971, RICHARD M. BAKER, was paid for his labors in Federal Reserve notes, checks convertible in Federal Reserve notes and currency with a denominated value under $100. Other than the negligible intrinsic value of such coin, RICHARD M. BAKER received no dollars to report as income to the Internal Revenue Service.

4. TITLE 31, SECTION 392, OF THE UNITED STATES CODE IS AN EX POST FACTO ACT IMPAIRING CONTRACTUAL OBLIGATIONS OF THE UNITED STATES, AND AS SUCH, IS PROHIBITED BY THE UNITED STATES CONSTITUTION.

As discussed earlier, during the revolutionary period serveral of the States, as well as the Continental Congress, were issuing paper as evidence of deposits of gold and silver which the bearer could redeem on demand. Subsequently the sovereignties passed laws to render the paper irredeemable. The economic chaos which ensued caused the Framers of the Constitution to concern themselves with the inclusion of a prohibition against both ex post facto laws and laws impairing contractual obligations, Article 1, Section 10.

The prohibition against ex post facto anticipated the retroactive legislation that 31 U.S.C. Section 392 concerns. Section 392 attempts to convert certificates of deposit into irredeemable fiat money. In doing so, Section 392 also

violates the prohibitions against impairment of contractual obligations. Pursuant to Section 392, the United States government would no longer have to perform on its promise to redeem the bearer of a dollar with a dollar's worth of gold or silver. This cancellation of debt can only undermine business and economics of the Western World as we know it today.

One of the reasons the United States was formed was to remedy the economic chaos that ensued when the thirteen original states were acting under the Articles of Confederation. The states as well as the Continental Congress issued irredeemable paper currency. As a result, members of the Constitutional Convention prohibited states from coining money, emitting bills of credit, or making any Thing but gold or silver coin tender in the payment of debts, as well as forbidding any ex post facto law or law impairing the obligation of contracts. Their distrust of paper money eventually lead them to strke out an authority to Congress to "emit bills of credit"

which was included in the original draft of Article I Section 8 Clause 2.

No where in the Constitution is the federal government empowered to issue paper money. Under Article I Section 8 Clause 2, the federal government has the power to borrower gold and silver and presumably to issue promissory notes. But it does not have the authority to deem such notes currency or legal tender for payment of debts, public or private.

Under the Coinage Acts of 1792, 1834 and 1873, Congress fixed the gold and silver content of the dollar.

In 1913, the States attempted to ratify the 16th Amendment enabling Congress to enact the Internal Revneue Code whereby the Federal Government could lay and collect taxes on dollars earned.

In 1953 Congress, in an apparent attempt to cure the defective ratification of the 16th Amendment passed Section 2 of Public Law 204, admitting the State of Ohio into the Union.

In 1968, Congress effectively removed all gold and silver backing of Federal Reserve Notes

by the passage of Title 31 Section 392 of the United States Code wherein all coins and currencies including Federal Reserve Notes, regardless of when coined or issued, are put on par.

Section 2 of Public Law 204 is unconstitutional as it is prohibited by the ex post facto provision of Article 1 Section 9 Clause 3 in that it retroactively legitimatizes Title 26 of the United States Code with the criminal sanctions of Section 7201 et seq.

If Title 31 Section 392 of the United States Code is unconstitutional, then there has not been any lawful money in circulation since 1968, either in the form of gold and silver dollars or federal reserve notes. And all obligations represented by paper money issued have been cancelled by the Federal government retroactively by this ex post facto legislation inasmuch as the obligations were incurred prior to 1968.

III

IT WAS ERROR FOR THE TAX COURT TO FIND THAT APPELLANTS' FAILURE TO FILE TAX RETURNS FOR THE TAXABLE YEARS IN QUESTION WAS NOT A PROPER EXERCISE OF THEIR RIGHTS UNDER THE FOURTH AND FIFTH AMENDMENTS.

In the subject years, Appellants chose not to file a tax return with the intent of exercising their Fifth Amendment privilege against self-incrimination.

Any tax return to be made under any provision of the Internal Revenue Laws shall contain or be verified by a written declaration that it is made under the penalties of perjury. Internal Revenue Code Section 6065(a). Case law has shown that perjury can be committed by making a false Federal Income Tax Return. Levin vs. United States, 5 F 2d 598, Cert. denied U.S. 562. Appellant recognizes that if he had accounted for the receipt of Federal Reserve notes as income in Dollars on his Federal Tax Return, he would have committed perjury, an act with criminal

sanctions. If in fact, the Department of Justice would not prosecute such an act, Appellants could still reasonably invoke their privilege in the face of the possibility that they could be prosecuted. Isaac vs. United States, 256 F. 2d 654.

In Isaac, The Appellant refused to give grand jury testimony. The Court held that despite the Appellant's assertion that he was not guilty of any Federal offense, the Courts must "indulge every reasonable assumption against waiver of fundamental constitutional rights" and that "questions against waiver of fundamental constitutional rights" and that "questions posed to witness in course of grand jury investigation . . . were such that there was a reasonable possibility that the witness' answers might tend to incriminate him" (Emphasis added).

In applying the Isaac doctrine to the instant matter, Appellant observed that "the information revealed in . . . an income tax

return is . . . the testimony of a "witness". Garner vs. United States, 96 SCT 1178, (1976); 424 U.S. 648; 47 LEd2 370. Garner also supports the proposition that a person can invoke the Fifth Amendment, when the government, by compelling him to file a return, seeks information that may subject him to criminal liability.

The privilege against self-incrmination protected by the Fifth Amendment of the United States Constitution can be exercised by simply failing to file a tax return. Grosso vs. United States, 390 U.S. 62 (1968): and see Marchetti vs. United States, 390 U.S. 39 (1968).

In the Appellant's case, the very act of signing and filing a return with the requested information provided in terms of Federal Reserve notes, could incriminate the Appellants. Thus, under the Grosso doctrine, the Appellants made a valid exercise of the Fifth Amendment rights by not filing any return for 1970 and 1971.

The Appellant, RICHARD M. BAKER, is further protected by the right to privacy guaranteed in

the Fourth Amedment which compliments the rights protected under the Fifth Amendment, "The doctrines of the Fourth and Fifth Amendments apply to all invasions of the government and its employees of the . . . privacies of life [and] any forceable and compelling extortion of a man's own testimony or of his private papers to be used as evidence to convict him of crime or to forfeit his goods are within the condemnation . . . (of those amendments)." Boyd vs. United States, 116 U.S. 616 (1886) and see Griswold vs. Connecticut, 381 U.S. 479 (1965).

Appellant, RICHARD M. BAKER, cannot be compelled to produce his records and papers to enable the United States government to execute a forfeiture of his property by way of a requirement that he file a tax return. This evil is compounded by the fact that such a requirement violates the Appellant's privilege against self-incrimination.

IV

IT WAS ERROR FOR THE TAX COURT BELOW TO FIND THAT THE SIXTEENTH AMENDMENT IS NOT LIMITED IN ITS APPLICATION TO INCOME EARNED BY BUSINESSES AND TRADES LICENSED BY THE GOVERNMENT.

A tax on income is an excise. It can only be levied if the income is derived from a privilege or license granted by government. Further, the Sixteenth Amendment did not grant to Congress any new taxing authority, Brushhaber vs. Union Pacific R. R. Co., 240 U.S. 1, 11-12, 18-19 (1915), but merely eliminated the requirement of apportionment when the source of income subject to excise is real or personal property. There being no new taxing authority, by virtue of the Sixteenth Amendment and, there remaining the requirement of apportionment for direct taxation, "income" that is not derived from a privilege or license cannot be taxed by the United States government.

The power to lay and collect taxes rests in Congress, deriving its authority from the

Constitution. This powers extends to all subjects over which Congress is sovereign.

Excluded from the power to tax are subject over which Congress is not sovereign. McCullock vs. Maryland, 17. U.S. (4 Wheat.) 316 (1819). The power to tax is the power to destroy. Loan Association vs. Topeka, 87 U.S. (20 Wall. 655 (1874). It is because of the recognition of the trueth of this statement that the power to tax is limited to enumerated subjects. Subjects not within the power to tax are immune from all taxation.

> This principal (that the power to tax involves the power to destroy) is pertinent only when there is no power to tax a particular subject, and has no relation to a case where such right exists. In other words, the power to destroy which may be the consequence of taxation is a reason by the right to tax should be confined to subjects which may be lawfully embraced therein, even although it happens that in some particular instance no great harm may be caused by the exercise of the taxing authority as to a subject which is beyond its scope. But this reasoning has no application to a lawful tax, for if it has there would be an end of all taxation; that is to say, if a power which is manifested by its imposition may when further exercised, be destructive, it would follow that every

> lawful tax would become lawful, and therefore, no taxation whatever could be levied. Knowlton vs. Moore, 178 U.S. 41, 60 (1899).

Congress is empowered to lay and collect, "Taxes, duties, imposts and excises" which must be uniform in the Constitution, Art. 1, Section 8, Clause 1. These are the so-called "indirect" taxes. Thus the Federal Corporate Excise Tax of 1909 was held to be a valid exercise of the Congressional tax power. Flint vs. Stone Tracy Co., 220 U.S. 107 (1910). Appellants do not contend that the power of Congress to lay and collect taxes is not limited so long as the object of the tax falls within one enumerated subject of taxation, and theirs is, by their volition, therefore, immune from all Federal "Income" Tax.

RICHARD M. BAKER, is a common tradesman and does not need a license to practice his trade.

The Sixteenth Amendment to the United States Constitution provides:

> The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

To understand the meaning of this provision of the Constitution, it must be placed in the context of its enactment. Congress had previously enacted an income tax in 1894. This was found to be unconstitutional in the famous case of Pollock vs. Farmers Loan & Trust Co., 157 U.S. 429 (1894). It failed because it was held to be a direct tax on property or income derived from property and in want of apportionment in contravention of Article 1, Section 2, Clause 3.

> We adhere to the opinion already announced, that taxes on real estate being indisputably direct taxes, or taxes on the rents or incomes of real estate are equally direct taxes . . . We are of the opinion that taxes on personal property, or on the income of personal property, are likewise direct taxes . . . The taxes . . . so far as it falls on the income of real estate and of personal property, being a direct tax within the meaning of the Constitution, and therefore, unconstitutional and void because not apportioned according to representation. Pollack vs. Farmer's Loan & Trust Co., (rehearing) 158 601, 637 (1894).

In 1913, the Sixteenth Amendment became a part of the Constitution. In a landmark decision following its enactment, the Supreme Court explained the meaning of that Amendment.

> (C)onfusion . . . arises from the conclusion that the Sixteenth Amendment provides for a hitherto unknown power of taxation, that is, a power to levy an income tax which although direct should not be subject to the regulation of apportionment applicable to all other direct taxes . . . (T)he far reaching effect of the erroneous assumption . . . clearly results that the proposition and the contentions under it, if acceded to, would cause one provision of the Constitution to destroy another. That is, they would result in bringing the provisions of the Amendment exempting a direct tax from apportionment into irreconcilable conflict with the general requirement that all direct taxes be apportioned. This result instead of simplifying the situation and making clear the limitations on the taxing powers, which obviously the Amendment must have been intended to accomplish, would create radical and destructive changes in our Constitution and multiply confusion. Brushhaber vs. Union Pacific R. R. Co., (240 U.S. 1, 11-12 (1915).

> (The contention that the Amendment treats a tax on income as a direct tax . . . is also wholly without foundation . . . The Amendment contains nothing repudiating or challenging the ruling in the Pollack case. Brushhaber vs. Union Pacific R. R. Co., supra, 18-19.

What the Amendment did accomplish was to declare that the income from real and personal property is to be considered as falling within ambit of Article 1, Section 8, Clause 1. It operates to separate the income from whatever real or personal property source from which it is derived; and thus the resulting excise tax was not subject to apportionment. An income tax, however, remains in its nature an excise regardless of the Sixteenth Amendment. Bushhaber vs. Union Pacific R. R. Co., supra, at 17. Therefore, as an excise it can only be levied on rights bestowed by the state.

The word "excise" means ". . . every form of taxation which is not a burden laid directly on person or property, or every form of charge imposed by public authority for the purpose of raising revenue on the performance of an act, the enjoyment of a privilege, or the engaging in an occupation." 33 Corpus Juris Secundum, "Excise" pp. 110-111.

"Excise" is defined to be an inland imposition, sometimes on the manufacture, sale

or consumption of a commodity and somtimes on licenses to pursue certain occupations and corporate privileges. A charge for the privilege of following an occupation or trade, or carrying on a business, gives a fairly good working idea of what an excise tax is. 47 C.J.S. "Internal Revenue", Section 1, pp. 125-126.

An "excise" then, is a charge or tax levied upon the doing of a certain specified act or upon the performance of certain specified activities associated with privileges granted by the taxing authority.

> The terms "excise" tax and "privilege" tax are synonymous, and the two are often used interchangeably. American Airways vs. Wallace, 57 F. 2d 877, 880. See also: East Ohio Gas Co. vs. Tax Commission of Ohio, 42 F. 2d 171 (1930).

Further, the proper measure of such an excise, once imposed is the income derived from the privilege. Flint vs. Stone Tracy Co., supra.

Since taxes are considered to be a practical necessity, it was thought proper to tax activities licensed by the sovereign or under the sovereign privilege. The Sixteen Amendment allowed the

measure of the taxation to be income (broadly defined) from whatever source derived, but, only that income associated with the carrying on of licensed or privileged activities is allowed.

Appellants, however, pursue no such state or federal licensed activity and are thus beyond the reach of the taxing power regarding their "income". Thus, an insurance company or other state-licensed business may under some circumstances constitutionally be destroyed by taxation, but no individual free man.

V.

IT WAS ERROR FOR THE TAX COURT BELOW TO FIND THAT THE SIXTEENTH AMENDMENT WAS PROPERLY RATIFIED.

Title 24 of the United States Code (Internal Revenue Code) was created under the authority of the Sixteenth Amendment. Article 5 of the United States Constitution required a ratification of a proposed amendment by three-fourths majority of the several states. At the time of its purported adoption in 1913, the Sixteenth Amendment

has been ratified by less than three-fourths of the states. One of the thirty-six states purportedly adopting the amendment was Ohio which had not been and is still not lawfully admitted to the United States.

The United States Congress on August 7, 1953, attempted to admit the State of Ohio into the Union as one of the states of the United States. Public Law 204, Chapter 337. In Section 2 of Public Law 204, Congress attempted to make the ratification effective as of March 1, 1803, 150 years earlier. This is an ex post facto law forbidden by Paragraph 3 of Section 9 of the United States Constitution. This attempt to admit Ohio in 1953 discloses that prior to that date, Ohio Territory had never been admitted as one of the states of the United States.

William Howard Taft, allegedly the 27th President of the United States, had been elected from Ohio Territory. Prior to his alleged inauguration, March 4, 1909, Taft had not lived 14 years within the United States, nor was he a

resident of one of the States of the United States when he was running for and allegedly elected, a constitutional disability. He was not qualified for the office. Not being qualified for the office, all of his official acts, including his cabinet appointments were a nullity.

This fact raises the serious constitutional questions as to whether the Congress could have been legally in session when the person who was entitled to hold the office of President and discharge the powers and duties of the office, to wit: the Vice President, was not in fact occupying the office and was in fact presiding over the Senate as Vice President.

The Congress on July 31, 1909, passed a Joint Resolution and deposited the same with the Secretary of State for transmittal to the legislatures of the several states for their ratification.

Philander C. Knox, allegedly the Secretary of State, appointed by Taft, transmitted the joint resolution. While this may have been

only a ministerial act, his appointment by Taft was void and he did not have ministerial power. When thirty-six states had ratified the proposed amendment, including Ohio, Knox did not have ministerial power to certify that the Amendment had become valid on February 25, 1913.

The Sixteenth Amendment and Title 26 are ex post facto legislation. An ex post facto law is a law made after the doing of the thing to which it relates and retroacting upon it. Not only Congress does not have the power to pass ex post facto legislation, the Constitution expressly prohibits ex post facto laws. Constitution, Article 1, Section 9, Clause 3.

The reason for inserting such sweeping prohibitions in the Constitution was apparently to be found in the freedom with which state legislatures in that era had passed paper money or legal tender laws setting aside existing contracts, so that what had been lent in gold and silver could be repaid in paper. Historically, the Supreme Court has interpreted the

ex post facto clause as applying to penal and criminal law. See Calder vs. Bull, 3 Dall. 386 (1798).

Every law that makes criminal an act done before the passage of such law that was innocent when done, or that aggravates a crime or makes it greater than when it was committed, or that changes the punishment and inflicts a greater penalty than the law annexed to the crime when committed, or that alters the rules of evidence, permitting less or different evidence to convict a person of an offense committed prior to its passage, or that operates in any way to the disadvantage of one accused of a crime committed prior to the enactment of the law is an ex post facto law.

Prior to August 7, 1953, Sections of the Internal Revenue Code passed pursuant to the Sixteenth Amendment made it a crime for persons subject to the Internal Revenue Code to fail to file a tax return. Because the Sixteenth Amendment had not been lawfully adopted, the Internal Revenue Code was a nullity prior to

August 7, 1953 and Section 2 of Public Law 204 is a nullity because it renders a previously innocent act criminal by virtue of the Internal Revenue Code. Such an attempt amounts to ex post facto legislation. Title 26 of the United States Code remains a nullity and cannot be cited by any Court of the United States.

VI.

IT WAS ERROR FOR THE TAX COURT BELOW TO FIND THAT THE INTERNAL REVENUE SERVICE HAD AUTHORITY TO COLLECT TAXES IN CALIFORNIA DURING THE YEARS IN QUESTION.

The Congress passed an act admitting the State of California into the Union, 31 Congress, Session 1, Chapter 50.

In Section 3 of said act, the admission of California was to remain effective so long as the State did not lay any taxes or assessments of any description whatsoever upon the public domain or the United States. Upon the happening of such a condition, i.e., the laying of any

tax or assessment upon land belonging to the United States, the determinable admission would be rendered null and void.

For a continual period of time preceding the year 1907, the County Tax Assessor of Plumas County, State of California has been assessing taxes on mining claims located on Federal property. The interests in the mining claims are deemed possessory interests in taxable improvements on tax exempt land pursuant to California Code of Revenue and Taxation, Section 107.

The Appellants contend that this usufruct is a franchise by the United States and should be exempt from taxation.

The Supreme Court has rejected immunizing private parties with possessory interests in United States land from non-discriminatory states taxes. United States vs. Detroit, 355 U.S. 456 (1958). Notwithstanding, the Detroit ruling and any purported consent by the United States to California taxing the subject mining claims, the fact remains that the state government is

levying a tax on United States government property contrary to the letter of the Legislation creating statehood.

By the express condition in Section 3 of the act admitting the State of California, California has lost is status as a state and reverted to its status as a missionary territory.

Richard M. Nixon, a resident of the California territory was not qualified to be President during the years 1970 and 1971. Hence, the Internal Revenue Service, an executive branch of government was without lawful authority at such times. This nation-wide state of pergatory was illuminated by the act of Mr. Nixon's resigning, an apparent admission of his lack of qualifications as well as other improprieties.

VII.

IT WAS ERROR FOR THE TAX COURT BELOW TO FIND THAT THE ASSESSMENT OF TAXES AGAINST APPELLANT SHIZUKO BAKER DOES NOT IMPAIR THE CONTRACT OF MARRIAGE BETWEEN APPELLANTS.

Article 1, Section 10, Clause 1 of the United States Constitution forbids any state to "pass any . . . law impairing the obligation of contracts." Under the doctrine of equal protection implicit in the Due Process Clause of the Fifth Amendment, the Federal Government is likewise forbidden to pass any such law impairing the obligation of contracts.

The sanctity of the marriage contract between RICHARD M. BAKER and SHIZUKO BAKER, cannot be impaired by either the Federal or State government. Said contract, entered into in Yokohoma, Japan does not provide for the wife's liability for the husband's pecuniary activities. By Oriental custom in a marriage contract, the contrary is the case and by Oriental custom, the wife is the possession and property of the husband. Thus, the Internal Revenue Service has no power to assess Appellant, SHIZUKO BAKER, for taxes on Appellant, RICHARD M. BAKER'S income.

VIII.

IT WAS ERROR FOR THE TAX COURT BELOW TO DENY APPELLANT'S MOTION FOR A JURY TRIAL.

The Constitution provides for jury trials in criminal cases by the Sixth Amendment (and also by Article 3, Section 2 of the original Constitution), and in civil cases where the value in controversy shall exceed $20.00 by the Seventh Amendment. Since the Sixth Amendment merely says that the accused "shall enjoy the right" to a trial by jury, jury trial in Federal Courts is not an institutional requirement, but only a "valuable privilege" which a person accused of crime may forego at his election.

In Tax Court the dichotomy between civil and criminal becomes dissipated due to the sanctions and remedies available to the Appellee outside of the immediate context of the Tax Court litigation. Hence, it is submitted that the Appellants derive their right to a trial by jury under both the Sixth and Seventh

Amendments of the Constitution. Notwithstanding the mandates of the Constitution, the Appellant's motion was denied at trial.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this Petition for a Writ of Certiorari should be granted.

RICHARD M. BAKER

AFFIDAVIT OF SERVICE

I, NICK O'MALLEY, BEING FIRST DULY SWORN, DEPOSE AND SAY,

ALL PARTIES REQUIRED TO BE SERVED WITH COPIES OF THIS PETITION HAVE BEEN SERVED BY MAILING FOUR COPIES THEREOF TO OPPOSING COUNSEL ON THIS 28th DAY OF APRIL, 1981, IN AN ENVELOPE, WITH POSTAGE PREPAID, PROPERLY ADDRESSED TO OPPOSING COUNSEL AS FOLLOWS:

GILBERT E. ANDREWS, Attorney
Tax Division
Department of Justice
Washington, D.C. 20530.

_____
NICK O'MALLEY

County of Orange)
) ss.
State of California)

Subscribed and sworn to before me, a Notary Public, this 28th day of April, 1981.

_____
Notary Public

FILED

DEC 29 1980

RICHARD H. DEANE
CLERK, U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RICHARD M. BAKER, SHIZUKO BAKER, Plaintiff-Appellants	)	NO. 79-7080
v.	)	
COMMISSIONER OF INTERNAL REVENUE, Defendant-Appellee.	)	MEMORANDUM

Appeal from the Decision of the
United States Tax Court

Before: GOODWIN, SNEED and REINHARDT, Circuit Judges

The appellants were assessed a deficiency and consequent penalties for failure to file federal income tax returns for 1970 and 1971. The Tax Court sustained the Commissioner's assessment. We have jurisdiction to consider the appeal under 26 U.S.C. § 7482.

In the Tax Court, and now again on appeal, the Bakers put forth what the Tax Court characterized as the "standard litany" of constitutional challenges to the income tax system, choosing not to litigate the merits of their assessed liability. Rather than lend credence to arguments clearly foreclosed in prior cases[1/] by engaging in a point by point rebuttal, we conclude that appellants' legal arguments are simply without merit, and their novel political theory without relevance to the issue before us. The judgment of the Tax Court is therefore AFFIRMED.

1/ See, e.g., Galvan v. Press, 347 U.S. 522, 531n.4 (1954); Merchants L & T Co. v. Smietanka, 255 U.S. 509, 521 (1921); Brushaber v. Union Pac. Ry., 240 U.S. 1 (1916); United States v. Gardiner, 531 F.2d 953, 955 (9th Cir.), cert. denied, 429 U.S. 853 (1966); Dahl v. Commissioner, 526 F.2d 552 (9th Cir. 1975); Heatman v. United States District Court, 503 F.2d 1032, 1035 (9th Cir. 1975); United States v. Daly, 481 F.2d 28 (8th Cir.), cert. denied 414 U.S. 1064 (1973).

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T. C. Memo. 1978-60

UNITED STATES TAX COURT

RICHARD M. BAKER and SHIZUKO BAKER, Petitioners v.
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 1221-76. Filed February 14, 1978.

Nick O'Malley, for the petitioners.

Willard N. Timm, Jr., for the respondent.

B-1.

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MEMORANDUM FINDINGS OF FACT AND OPINION

TANNENWALD, Judge: Respondent determined deficiencies in the petitioners' Federal income taxes and additions thereto as follows:

			Additions to tax		
	Year	Deficiency	Section 6651(a)[1]	Section 6653(a)	Section 6654
Richard M. Baker	1970	$852.51	$135.09	$42.63	$14.80
	1971	924.45	230.49	46.22	29.54
Shizuko Baker	1970	666.10	88.49	33.30	8.83
	1971	339.26	84.19	16.96	10.81

Because of concessions made by respondent, the issues remaining for decision are (1) whether petitioner Richard M. Baker earned income in 1970 and 1971 and the amount thereof; (2) whether he was self-employed during those years; and (3) whether petitioners are liable for additions to tax under sections 6651(a), 6653(a), and 6654.

FINDINGS OF FACT

Petitioners Richard M. Baker (Richard) and Shizuko Baker are husband and wife who resided in

[1] All section references are to the Internal Revenue Code of 1954 as amended and in effect during the taxable years in issue.

Anaheim, California, at the time of the filing of the petitions herein. In lieu of filing income tax returns for the years 1970 and 1971, petitioners filed an 80-page petition using the front page format of a Form 1040, without including any information required to be reported therein.

Richard was born in East St. Louis, Illinois. He has resided in the United States for most, if not all, of his adult life, including the taxable years in issue.

Richard was employed by Active Tools during the early part of 1970. During 1970 and 1971, he operated a business called Baker's Maintenance, which performed repairs and alterations to buildings. He did not report any income earned in 1970 and 1971 to the Internal Revenue Service and did not pay any Federal income tax during this period other than what was withheld by Active Tools and for which credit was given in the deficiency notice.

Respondent calculated Richard's business income from his bank records, supported by specific checks from individuals who paid him for repair work. The amounts deposited in Richard's account included cash

deposits. Cash deposits made prior to the date that he first negotiated a business check outside of his bank account were considered in their entirety as income from taxable sources. Respondent treated one-third of subsequent cash deposits made in 1970 as originating from the checks not deposited and, therefore, not taxable. The remaining two-thirds of the cash deposited was assumed to be from a taxable source.

For 1971, respondent determined that deposits in Richard's bank account shortly after business checks were cashed reflected the proceeds of such checks. Such cash deposits were not included in income; otherwise the deposits were treated as income from a taxable source.

Richard made seven payments on a mortgage in cash totaling $1,652 during the last seven months of 1971. Respondent treated this amount as being made out of receipts which were taxable to petitioners and which were not otherwise included in income.

OPINION

Petitioners have advanced numerous arguments challenging the legality of the income tax in the instant case, many of which are part of the standard

litany of the so-called "tax-protester" cases. The questions raised are: (1) whether Richard is subject to the laws of the United States; (2) whether he received any "dollars" as income for tax purposes because he received only Federal Reserve Notes and coins not made out of gold or silver; (3) whether petitioners' failure to file tax returns for the taxable years in question was a proper exercise of their rights under the Fourth and Fifth Amendments; (4) whether the Sixteenth Amendment is limited in its application to income earned by businesses and trades licensed by the state; (5) whether the Sixteenth Amendment was properly ratified; (6) whether the Internal Revenue Service had authority to collect taxes during the years in issue; (7) whether the assessment of taxes against Shizuko Baker impairs the marriage contract between the petitioners; and (8) whether respondent correctly determined the deficiencies and additions to tax.

Petitioners claim that Richard renounced and thereby lost his United States citizenship before the taxable years in question (see 8 U.S.C. 1481, et seq.). There is no need to resolve this claim because, whether or not Richard was a citizen, he was a resident of the

United States and thus remained liable for income taxes imposed by the Internal Revenue Code. Section 1.1-1(a) and (b), Income Tax Regs. Petitioners' argument that, by "absolving allegiance to the government," Richard has removed himself from the jurisdiction of the tax laws is totally without merit.

Petitioners' argument that Federal Reserve Notes are not dollars for tax purposes is similarly without justification. It has been considered in numerous other cases, and in each instance has been rejected. See, e.g., United States v. Whitesel, 543 F.2d 1176 (6th Cir. 1976); United States v. Kelley, 539 F.2d 1199 (9th Cir. 1976); Hatfield v. Commissioner, 68 T.C. 895 (1977); Gajewski v. Commissioner, 67 T.C. 181 (1976), on appeal (8th Cir. May 23, 1977); Cupp v. Commissioner, 65 T.C. 68 (1975), affd. without opinion 559 F.2d 1207 (3d Cir. 1977).

Equally without merit is the argument that petitioners' failure to file tax returns is justified as an exercise of their rights under the Fourth and Fifth Amendments. This argument is premised upon petitioners' belief that Federal Reserve Notes are not dollars. It has been held repeatedly that such ground does not excuse the filing of a proper return under the Fifth Amendment.

See, e.g., United States v. Daly, 481 F.2d 28 (8th Cir. 1973), and Hatfield v. Commissioner, supra at n. 2. Petitioners' Fourth Amendment claim, that requiring the filing of a tax return is a forcible taking of a man's private papers, is frivolous. A tax return is inherently a public paper, prepared solely for the taxing authorities. See, Couch v. United States, 409 U.S. 322, 335-336 (1973); Flint v. Stone Tracy Co., 220 U.S. 107, 174-177 (1911); Heathman v. United States Dist. Ct. for Cent. Dist. of Cal., 503 F.2d 1032, 1035 (9th Cir. 1974).

Petitioners next argue that the Sixteenth Amendment[2] extends only to income which properly would be subject to an excise tax. A simple reading of the Amendment refutes petitioners' contention; the power granted to Congress includes the power to tax income from whatever source derived. There is no indication that the restriction suggested by petitioners was ever intended.

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[2] The text of the Sixteenth Amendment is as follows:

> The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

Petitioners' construction of the Sixteenth Amendment is based, as far as we can determine, solely upon a misinterpretation of Brushaber v. Union Pac. R.R., 240 U.S. 1 (1916), in which the Supreme Court held that the income tax provisions of the Tariff Act of October 3, 1913, 38 Stat. 114, 166, were constitutional under the Sixteenth Amendment. In that case, the Supreme Court indicated that an income tax could be either a direct or an excise tax, so long as the tax conformed to the constitutional limitations applicable to each. The Sixteenth Amendment simply permitted the enactment of an income tax which would be a direct tax without satisfying the conditions theretofore required for direct taxes. Roberts v. Commissioner, 62 T.C. 834 (1974); Penn Mutual Indemnity Co. v. Commissioner, 32 T.C. 653 (1959), affd. 277 F.2d 16 (3d Cir. 1960).

The argument that the Sixteenth Amendment was not properly ratified is premised solely on the theory that Ohio was not a State until 1953. Every case in which this issue has been presented has been decided against the taxpayer. Lorre v. Alexander, ___ F. Supp. ____ (W.D. Tex. 1977, 40 AFTR 2d 77-5677, 77-2 USTC par. 9672);

McCoy v. Alexander, ___ F. Supp. ____ (S.D. Tex. 1977, 40 AFTR 2d 77-5299, 77-2 USTC par. 9504); McMullen v. United States, ___ F. Supp. ____ (W.D. Tenn. 1976, 39 AFTR 2d 77-628, 77-1 USTC par. 9142); Ivey v. United States, ___ F. Supp. ____ (E.D. Wis. 1976, 38 AFTR 2d 76-5909, 76-2 USTC par. 9682). We agree. Petitioners' theory is based on the enactment of Pub. L. 204, ch. 337, 67 Stat. 407 (1953) relating to Ohio's Admission into the Union. As the legislative history of this Act makes clear, its purpose was to settle a burning debate as to the precise date upon which Ohio became one of the United States. S. Rept. No. 720 to accompany H.J. Res. 121 (Pub. L. 204), 82d Cong. 2d Sess. (1953). We have been cited to no authorities which indicate that Ohio became a state later than March 1, 1803, irrespective of Pub. L. 204.

Petitioners next argue that the Internal Revenue Service lacked authority to collect taxes because California was not a state during the years at issue. This result is premised on the facts that the Act admitting California into the United States prohibited the assessment of taxes upon the property of the United

States and that Plumus County, California, allegedly taxed mining claims on Federal property. Aside from a variety of obvious questions, such as petitioners' standing to raise such an issue and the consequences flowing from any violation of such prohibition, the fact of the matter is that nondiscriminatory taxation of an interest such as a mining claim on Federal land is not a tax upon the United States. See United States v. Detroit, 355 U.S. 466 (1958). Petitioners' argument is frivolous.

The claim that assessment of taxes against Shizuko Baker impairs the marriage contract of the Bakers is not convincing. Petitioners have failed to produce any evidence concerning the contents of such a contract and have utterly failed to show how it would be impaired by respondent's action, as is their burden. Rule 142, Tax Court Rules of Practice and Procedure. Cf. Black v. Commissioner, 69 T.C. 505 (1977).

Finally, we turn to the deficiencies and additions to tax determined by respondent. Petitioners' sole disagreement as to the reconstruction of Richard's income involves the alleged inclusion of both cash

deposited in petitioners' bank account and checks not so deposited. Respondent made adjustments to reflect the possibility that a portion of the proceeds of checks would be deposited as cash, and petitioners have not shown any error in this regard, as was their burden. Rule 142, Tax Court Rules of Practice and Procedure.

On brief, Richard conceded that he was self-employed during 1970 and 1971. No evidence was presented indicating that respondent's determinations of deficiencies in income and self-employment tax are in error. Accordingly, they are sustained (as adjusted to reflect concessions made by respondent prior to trial).[3]

Petitioners have made no serious argument disputing the imposition of additions to tax under sections 6651(a), 6653(a) and 6654 other than their claim that there were no deficiencies to which such additions could attach. No valid tax returns were filed; the form of petition

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[3] In their reply brief, petitioners alleged that they could document business expenses, but they chose not to do so at trial in order to present the arguments heretofore considered. Having made this decision, petitioners must live with the consequences.

which petitioners submitted to the Internal Revenue Service did not constitute such a return. See Hatfield v. Commissioner, supra; Cupp v. Commissioner, supra. Raising of the arguments heretofore considered does not excuse petitioners' failure to file and the addition to tax under section 6651(a) must be sustained. United States v. [illegible]ly, supra; United States v. Porth, 426 F.2d 519 (10th Cir. 1970); Hatfield v. Commissioner, supra. Similarly, since there is no evidence showing error in the Commissioner's imposition of additions to tax under sections 6653(a) and 6654, they too must be upheld. Hatfield v. Commissioner, supra.

Solely to reflect concessions made by the respondent,

Decision will be entered under Rule 155.